

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-2075 JB

JUAN CARLOS ORTIZ-CABRERA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Sentencing Memorandum, filed October 3, 2008 (Doc. 16). The Court held a sentencing hearing on October 7, 2008. The primary issue is whether the Court should sentence Defendant Juan Carlos Ortiz-Cabrera to a time-served sentence. Because a time-served sentence is consistent with the advisory guideline sentence, and because there is no sound reason to keep Ortiz-Cabrera in custody any longer, the Court will grant his request for a time-served sentence.

PROCEDURAL BACKGROUND

Ortiz-Cabrera pled guilty on September 9, 2008, to a single-count Information. Ortiz-Cabrera was charged with Reentry of a Removed Alien, in violation to 8 U.S.C. § 1326(a) and (b). In anticipation of sentencing, the United States Probation Office ("USPO") prepared a Presentence Investigation Report ("PSR").

The USPO recommends an advisory guideline sentence of 0 to 6 months, which in this District is treated as a recommendation of a time-served sentence. The USPO provided the PSR to Ortiz-Cabrera's counsel on September 29, 2008. Ortiz-Cabrera's attorney traveled to the Torrence

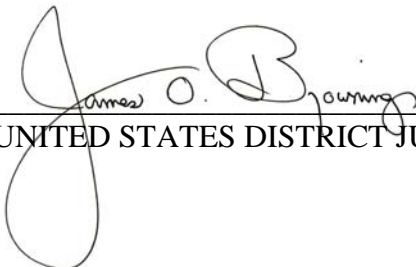
County Detention Center, where Ortiz-Cabrera is incarcerated, to review the PSR with Ortiz-Cabrera. A Spanish-speaking interpreter read the entire PSR to Ortiz-Cabrera in his native language of Spanish.

Ortiz-Cabrera has submitted a sentencing memorandum. Ortiz-Cabrera does not raise any factual objection or any legal argument, but requests that the Court give him a sentence of time served.

ANALYSIS

The Court deems a time-served sentence as an appropriate sentence under the circumstances. A careful review of the 18 U.S.C. § 3553(a) factors indicates that there is no sound reason to keep Ortiz-Cabrera in custody any longer. A time-served sentence is consistent with the advisory guideline sentence, which is 0 to 6 months in this case, and the guideline sentence appropriately balances the 18 U.S.C. § 3553(a) factors. At the hearing, the United States did not object to a sentence of time served. Accordingly, for the reasons stated at the hearing, because the 18 U.S.C. § 3553(a) factors do not warrant keeping Ortiz-Cabrera in custody any longer, and other reasons consistent therewith, the Court will impose a sentence of time served.

IT IS ORDERED that the request for a time-served sentence in the Defendant's Sentencing Memorandum is granted.


UNITED STATES DISTRICT JUDGE

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